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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
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of Minorities
Fifty-first session
Item 4 (d) of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 June 1999]

1. In theory the right to education is a right which is the same for everyone; but in practice this is not the case. It can be observed that for a substantial proportion of humankind the right to education, enshrined in article 26 of the Universal Declaration of Human Rights and article 13 of the International Covenant on Economic, Social and Cultural Rights is not effective. In 1990, according to the UNESCO World Report on Education, 1991, there were 948 million illiterate adults throughout the world. The highest rates of illiteracy were to be found in the poor countries and, within each country, among the poor, and particularly among women and children. The assertion that illiteracy worldwide is falling is not entirely true; while it is true that the worldwide illiteracy rate is falling in percentage terms, the actual number of illiterate adults is not. 1/

2. In addition, the growing poverty among large sections of the population and reductions in social expenditure in many countries as a result of adjustment policies have given rise to increases in the school dropout rate. The UNICEF report entitled The State of the World's Children, 1989 stated that spending on education in the 37 poorest nations had decreased by 25 per cent and that "in almost half of the 103 developing countries from which recent information is available, the proportion of 6-to-11-year-olds enrolled in primary school is now falling" (loc. cit., p. 1). As regards more specifically girls, "the increasing tendency in many areas to keep girls out of school to help with their mothers' work virtually ensures that another generation of females will grow up with lesser prospects than their brothers". In Africa, for example, according to Ms. Phoebe Asiyo of the United Nations Development Fund for Women, "more and more girls are dropping out of both primary and secondary school or just missing school altogether due to increasing poverty". 2/

3. Some people assert the necessity of overcoming this educational deficit and guaranteeing minimum needs in the educational field. Why speak of minimum needs and not simply of educational needs? Because, as is stated in an article in the UNESCO review Prospects (No. 101), which is entirely devoted to the subject of globalization of the economy and of educational policies: "The occupational pattern of the pyramid of unskilled, skilled and management staff was parallelled by the pyramid pattern of primary education for all, secondary for a selected group and higher education for an elite". 3/

4. Professor Ferrán Ferrer 4/ states that education as it presently exists reproduces social inequalities. That is why those persons who accept the perpetuation of social inequalities speak of the satisfaction of minimum educational needs - literacy (in the best of cases) for the masses and higher education for the governing elite. Beginning at primary school, the conditions are created which will send a substantial proportion of the children into production as early as possible; in other words, they receive "useful, moneymaking skills" 5/

5. The problems arising at the present time in connection with the right to education cannot be considered in isolation from the specific nature of contemporary society, which is marked by an increasingly rapid process of globalization in every field. Economic globalization has speeded up the tendency to divide human beings into four categories: the governing elites; workers ("human resources", the cost of which attempts are being made to

reduce); customers (if possible, solvent); and a fourth category - the marginalized. Education is faced with the great challenge of helping to eradicate this categorization of human beings and to restore the concept of the citizen and of the intrinsic quality of human beings as individuals and as members of the national and international communities. This task is the responsibility not only of teaching institutions but also of the mass communication media, the family and the community, which are also vectors of education.

6. Education generally, and human rights education in particular, should be based on the stimulation of critical thinking and the promotion of independent reflection. "The right to learn is: the right to read and write; the right to question and analyse; the right to imagine and create; ... the right to develop individual and collective skills" (quotation from the Declaration of the Fourth International Conference on Adult Education, Paris, 19-29 March 1985). A human being whose thinking has been domesticated is incapable of claiming, and even of enjoying, his rights.

7. But in practice the mass communication media, which are one of the principal vectors of education, transmit the "evidence" and choices offered by the currently dominant ideologies. Television - the most powerful medium for the orientation of public opinion and an appropriate means of communication for the supplanting of reasoning by images and the replacement of "I think, therefore I am" by "I feel, therefore I am" - fully played its part in the gigantic disinformation machine which functioned during the Balkan war. For instance, when the Serbs captured three American soldiers, the text of the Geneva Conventions on the treatment of prisoners of war appeared on the television screens; but the communication media never attempted to establish any relationship between the NATO bombardments and those same Conventions. The selective information transmitted by image was supplemented by disinformation. What percentage of public opinion was aware of the true situation in Kosovo before the bombardments began; of the content of the conditions presented by NATO to Yugoslavia as an ultimatum at Rambouillet; of the anti-war demonstrations in different countries of the world; of the charges of war crimes laid against the NATO leaders before the International War Crimes Tribunal for the former Yugoslavia by groups of jurists in several countries; of the anti-war declarations made by many eminent persons in different countries; of the air raids on Yugoslavia in which fragmentation and depleted-uranium bombs were used with serious and very long-term effects on the environment and health?

8. The communication media even ignored the decisions of the International Court of Justice dated 2 June 1999. The Court rejected the application for provisional measures (cessation of the bombardments) submitted by the Republic of Yugoslavia against various member States of NATO, but in the majority of cases it decided to remain seized of the substance of the case (condemnation for aggression and compensation for damage). Furthermore, the Court in its statement of reasoning said that it was "profoundly concerned with the use of force in Yugoslavia" which "raises very serious issues of international law"; and, "mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of

peace and security under the Charter and [its] Statute", the Court deemed it "necessary to emphasize that all parties before it must act in conformity with their obligations under the United Nations Charter and other rules of international law, including humanitarian law". 6/

9. In other words, the call for respect for international law addressed by the highest court in the international community was concealed from public opinion. This unilateral presentation of the Balkan war was adopted not only by the mass communication media but also by the great Powers, certain non-governmental organizations and even high-level bodies in the United Nations system. This practice is contrary to human rights education, the basis for which must be the concept of respect for human beings regardless of race, religion or nationality, the defence of peace and peaceful coexistence of peoples and States, the peaceful settlement of disputes, etc., all within the framework of the standards approved by the international community, including the United Nations Charter and the Universal Declaration of Human Rights. An attempt is being made to impose the idea that what is done by the strongest is automatically right. This is diametrically opposed to the concept of universal respect for the standards established by the international community and currently in force.

10. Human rights education should also be based on an integrated approach to human rights recognizing the mutual dependency of civil and political rights and economic, social and cultural rights on one another. Experience has shown that the economic and financial policies which debar majorities from the enjoyment of economic, social and cultural rights are decided on by minority groups which begin by setting aside the principles of representative democracy and people's participation and end by violating the civil and political rights of the citizens as well as their economic, social and cultural rights.

11. On various occasions when addressing the Commission on Human Rights, the American Association of Jurists has insisted on the need to incorporate economic, social and cultural rights in advisory and technical assistance activities.

12. In conclusion, the American Association of Jurists considers that:

(a) Human rights teaching should help to foster in individuals a critical awareness vis-à-vis society and should constitute a contribution to the liberation and full development of the individual;

(b) That teaching should cover all rights without exception, considering their indivisibility;

(c) It should include not only standards and procedures but an apprenticeship in measuring realities against those standards.

Notes

1/ Ali Hamadache, "Literacy, human rights and peace", Literacy Lessons series, UNESCO-IBE, 1990, p. 5.

2/ Jodi L. Jacobson, "Gender bias, poverty and the population trap" in Populi, the magazine of the United Nations Population Fund, Vol. 19, No. 4, October 1992, p. 12.

3/ Phillip Hughes, "Education and work: dialogue between two worlds", in Prospects, UNESCO, No. 101, March 1997, p. 9.

4/ Ferrán Ferrer: "The right to education and programmes to remedy inequalities" (E/C.12/1998/20).

5/ George Kent, "The right to quality education" (E/C.12/1998/13).

6/ International Court of Justice, Press Communiqué 99/26, 2 June 1999: Legality of use of force (Yugoslavia v. France).

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THE INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 June 1999]

GE.99-13910 (E)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The international economic order and the promotion of human rights

1. In 1948 the United States, at the height of its power as the sole major beneficiary of the Second World War, imposed its views at Bretton Woods. There was to be a system of fixed exchange rates (with a margin of 1 per cent either side for the parities established between currencies) and with parities established in relation to gold or the United States dollar (article IV of the Articles of Agreement of the International Monetary Fund before the 1978 amendment). Instead of an international bank or clearing house, as Keynes had proposed at Bretton Woods, a fund was established in which each member country deposits a quota, partly in gold and partly in national currency. A member country in financial difficulties is entitled to receive without conditions an amount in various currencies equivalent to its gold quota. To obtain a larger sum it must comply with the conditions laid down by the Fund in the fields of economic, monetary and budgetary policy.

2. This is in practice how the dollar became the institutionalized international currency. All countries were forced to accumulate reserves in dollars to deal with fluctuations in their respective currencies arising from balance-of-payments situations. Under this system the United States Federal Reserve Bank does not need to defend the dollar ("a dollar is always a dollar"), since the central banks of the other countries have to defend it in order to maintain the parities of their own currencies vis-à-vis the dollar.

3. "The Central Bank of the United States does not have to defend the exchange rate of the dollar; the others do so in its place. Is this still the case in the event of a United States balance-of-payments deficit? Certainly. Even if the deficit is substantial? Again, certainly. Even if there is no limit on the deficit? Yet again, certainly. What happens if the United States is in deficit? First, it pays its creditors in dollars, while other countries generally cannot pay with their national currencies. But this is not the most important consideration. If the creditor demands payment in marks, the United States Bank will sell dollars for marks. What matters is that the dollars used to pay the deficit will affect the exchange rates between dollars and marks, dollars and yens, dollars and francs, etc. That pressure will push the rate of the dollar below the official parity, and when the level is reached at which the central bank concerned is required to intervene, it will buy dollars with its national currency. There is literally no limit on the United States deficit. By convention and unwritten rule the dollars issued to finance the deficit must be purchased at a fixed exchange rate by the central banks of the countries which have surpluses vis-à-vis the United States." 1/

4. Thus the Bretton Woods system established an exorbitant privilege favouring the United States in the field of international payments; in practice, it meant that the rest of the world had to finance the United States budgetary deficit. "The creation of dollars serves United States economic policy without regard for its impact on international relations." 2/ In 1992 the United States had a net indebtedness of 521 billion dollars and a gross indebtedness of over 2.5 trillion (the total amount of dollars transferred to non-residents). This figure corresponds to the amount of international

currency created by the United States, which between 1978 and 1992 increased at an annual rate of 14 per cent. 3/ "The United States imports more than it exports because it consumes more than it produces and spends money it has not earned ... this is how the richest country feeds on the savings of others, including those of developing countries when the latter manage to reimburse part of their debts." 4/

5. This was the root cause of a growing turbulence in the international monetary system which was institutionally recognized in 1975 with the abandonment of the system of fixed exchange rates (amendment of article IV of the IMF Articles of Agreement, which has been in force since 1978), a situation which a specialist economist defined as follows: "Your can do anything you like provided that you notify IMF headquarters in writing" (Pascallon, quoted by Lelart). In other words, a principle designed to maintain order in the monetary system (the system of fixed exchange rates) was abandoned; but in practice the dollar remained the international currency. Thus the whole of the rest of the world continued to subsidize the United States economy, since the central banks of the other countries continued to intervene to avoid a fall in the dollar rate. Admittedly, the effectiveness of interventions by central banks is steadily decreasing, since few of them can handle the enormous sums which flood into international financial markets without warning to speculate on national currencies.

6. In its annual report published in September 1995 UNCTAD referred to "systemic risks of financial derivatives" and "their potential for causing a crisis that would lead to a breakdown in the financial system". 5/ The G7 are aware of this danger and have therefore decided to assign new functions to the IMF to enable it to control (or attempt to control) international financial movements. This is in fact a further step towards the concentration of power within an exclusive club of the rich.

7. The abandonment of the fixed exchange rate system, together with the abandonment of the convertibility of the dollar into gold decided on by the United States in 1971, reflect the weakening of the absolute hegemony of that country in the capitalist world and the emergence and consolidation of the Japanese and Western European poles, on the one hand, and the strengthening of the trend towards economic and financial globalization, on the other, with three principal centres - Asia, Western Europe and the United States - and peripheral units of varying status - integrated with the centre, exploited as colonies or simply left to their own devices. 6/

8. The decision to create the Euro opens the possibility of ending the worldwide hegemony of the dollar, since the European Union has an economic and demographic weight comparable to that of the United States and has some advantages, such as a higher gross national rate of saving. However, whether Europe's leaders have the political will to make Europe a genuinely autonomous power remains to be seen.

Notes

1/ Jean Denizet, "La naissance du système central", Crise persistante du système monétaire international, Cahiers français de la Documentation française, No. 198, October-December 1980, p. 6.

2/ Michel Lelart, Le système monétaire international, Editions La Découverte, 1993, p. 55.

3/ Lelart, op. cit., pp. 95-97.

4/ Lelart, op. cit., p. 97.

5/ UNCTAD, Trade and Development Report, 1995: Overview.

6/ François Chesnais, La mondialisation du capital, Edit. Syros, 1994, pp. 25 ff.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

THE REALIZATION OF THE RIGHT TO DEVELOPMENT

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 June 1999]

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Obstacles to the realization of the right to development on the African continent

1. At the outset of the crisis Africa was the least industrialized continent in terms of both industrial production and industrial structure. This low level of industrialization is the most visible heritage of colonialism. Both during the period of the Great Depression and during the Second World War, colonial policies prevented Africa from beginning the process of import substitution which was able to develop in other parts of the Third World such as Latin America. Thus Africa has remained extremely vulnerable to external factors.

2. By the end of the 1970s many African countries had achieved progress in both the economic and social fields. However, the subordination of the dominant elites in the majority of African countries to neo-colonial powers led to a gradual deterioration of economic and social conditions over a large part of the continent; that deterioration was aggravated during the 1980s by the structural adjustment policies imposed by the IMF.

3. For instance, in Uganda the real minimum wage fell from a base 100 in 1972 to only 9 in 1984; in other words, it had fallen by more than nine tenths. In 1972, the purchase of food for a family took up 60 per cent of real earnings; but by 1984, 450 per cent of real earnings was needed for the same purpose. In non-statistical terms, this means that people were going hungry. 1/ The same source gives various examples of Ugandan industries which are totally dependent on foreign sources for raw materials, manufacturing systems, machinery and even packaging. Just one example is quoted here. Mukisa Biscuits operated during the 1950s using local raw materials. In 1982 it was reconstructed with UNDP funds and the technical advice of UNIDO. Now that it has been reconstructed with the aid of the two United Nations agencies mentioned, Mukisa Biscuits only uses local water to boil imported raw materials; it uses foreign moulds to shape its products; and it packs them in imported paper and boxes.

4. Like the majority of African countries, Uganda has to remit abroad much more than it receives as loans or for its exports. In 1992, external debt amounted to the equivalent of 100.1 per cent of GNP in Africa as a whole and 108.1 per cent in sub-Saharan Africa. In 10 years Africa's indebtedness as a proportion of GNP doubled. 2/ During the period 1965-1980 the average GDP growth rate in sub-Saharan Africa was 5.6 per cent; during the period 1980-1986 it was nil. 3/

5. The UNICEF document entitled "L'Afrique vers la reprise économique" points out that at the end of the decade the IMF and the World Bank became net beneficiaries of resources coming from Africa and were thus in the abnormal situation of undermining the financial viability of their own structural adjustment policies. 4/ The same document pointed out that Africa was "in urgent need of a different development strategy" (page 9).

6. The seventh session of the United Nations Conference on Trade and Development (UNCTAD), held in 1987, forecast the development of tragic situations similar to that existing in Rwanda unless economic and social orientations in the countries crushed by debt and adjustment policies were changed rapidly.

7. Another factor making for the impoverishment of the African countries was the fall in the prices of their export products. For instance, the price of coffee, which made up 77 per cent of Rwanda's exports, fell by almost 50 per cent in the space of a few years.

8. One blow to the levels of living of a number of African peoples was the devaluation of the CFA franc. That devaluation, which was imposed by the IMF and accepted by the Governments concerned, seriously affected the basic consumption patterns of the population, since many of those countries have become importers of food as a result of the disappearance of their traditional production structures. Certainly the victims of the devaluation were not consulted. The ILO Eighth African Regional Conference (Mauritius, 19-26 January 1994) expressed "alarm at the dramatic effects of the devaluation on the living standards of the population including millions of workers and their families, many of whom have already suffered severe cuts in their real income and purchasing power". 5/

9. In contrast, the IMF stated its satisfaction at the initial results of the devaluation of the CFA franc. It observed that during the first 9 months of 1994 the CFA franc lost about 33 per cent of its real value - a figure roughly in line with forecasts. Wage costs - another barometer of competitiveness - fell by about 40 per cent. The IMF recommended that, to consolidate the progress made, Governments should exercise stricter control of public expenditure, pursue a prudent wage policy and liberalize the price-setting mechanisms, the labour market and foreign trade. 6/ In other words, the IMF approved of the 40 per cent drop in the real earnings of workers in French-speaking Africa in the space of a few months and encouraged the Governments concerned to "consolidate the progress made".

10. According to the United Nations World Economic Survey, in 1992 Africa as a whole suffered an outflow of resources of US$ 1,600 million. This situation did not prevent the present United States Secretary of the Treasury, Mr. Lawrence Summers, from stating, referring to Africa, that "the world cannot maintain forever the current level of aid". 7/

11. Mr. Summers acquired a measure of notoriety when, as chief economist at the World Bank, he proposed in an internal memorandum that the Bank should promote the export of contaminating industries to the Third World, adding that the dumping of toxic waste in the lowest-income countries was a matter of impeccable economic logic, since the life of an inhabitant of the Third World, in terms of life expectancy and per capita income, was worth much less than that of an inhabitant of a developed country. 8/

12. The objectives of transnational capital in Africa were clearly expressed by Mr George Moose, at the time United States Under-Secretary of State for African Affairs, in a speech to the United States Senate as follows: "We must ensure our access to the immense natural resources of Africa". 9/

13. The dramatic events taking place in Africa - civil wars, interethnic fighting, large-scale population displacements and famine - can to a considerable extent be attributed to these policies of the great powers, transnational enterprises and the Bretton Woods bodies.

14. For example, in Rwanda the average rate of economic growth over the period 1980-1991 was negative (-2.4 per cent); the infantile mortality rate is over 110 per thousand; and in 1990 the proportion of doctors in the population was the lowest in the world - 1 doctor for every 72,990 inhabitants - an even lower ratio than in 1970 (World Bank, World Development Report 1993). Between 1980 and 1991 the external debt of Rwanda rose from 103 per cent of its exports to 591 per cent (World Bank, World Development Report 1993, Table 24).

15. The annual rate of deforestation in Rwanda between 1981 and 1985 was 2.3 per cent (one of the highest in the world). In Africa generally forests have been felled to provide exotic wood for the markets of the so-called civilized countries. It is estimated that between 1930 and 1970 between 25 and 30 per cent of Africa's rain forests were destroyed. Particularly during the most recent decades, this high rate of deforestation, with catastrophic ecological consequences (drought and erosion), is to a considerable extent due to the conversion of forests into land for the cultivation of export crops in a desperate attempt to obtain foreign currency for debt service. 10/

16. The "ideas" of Mr. Summers and the policies of the IMF, the World Bank, transnational enterprises and the great powers in Africa might be described in Hitlerian terms as the "final solution" of the African problem.

Notes

1/ Mahmood Mandani, "Uganda: contradictions in the IMF programme and perspective", in The IMF and the South, The Social Impact of Crisis and Adjustment (Dharam Ghai, ed.), UNRISD, 1991.

2/ United Nations, World Economic Survey 1993, Tables A.35 and A.36.

3/ Thandika Mkandawire, "Crisis and adjustment in sub-Saharan Africa", in Dharam Ghai, op.cit.

4/ UNICEF, "L'Afrique vers la reprise économique" (summary published in 1992), p. 32.

5/ ILO Governing Body document GB.259/4/7, March 1994, p. 25.

6/ Jean Clément, assistant to the Director of the African Department of the IMF, "Bilan après la dévaluation du franc CFA", in Finance and Development (quarterly publication of the World Bank and the IMF), June 1995.

7/ United Nations, Africa Recovery, Vol. 7, No. 1, June 1993, p. 3.

8/ The Economist, 15-21 February 1992.

9/ Le Monde Diplomatique, July 1993.

10/ Solon Barraclough and Krishna Guimire, "The social dynamics of deforestration in developing countries", UNRISD discussion paper No. 16, 1990.

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THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 July 1999]

1. The FIDH and its affiliate, the Viet Nam Committee on Human Rights, are deeply disturbed by the non-application of international standards of justice in the Socialist Republic of Viet Nam (SRV). On the pretext of "national security" infringements, citizens are routinely deprived of their freedom under domestic legislation on "probationary detention" (quan che) or "administrative detention" (quan che hanh chinh). These concepts, which are applied widely and indiscriminately against government critics, human rights defenders and independent religious clergy and followers, impose restrictions on the fundamental rights of freedom of expression, opinion and belief which are inadmissible under international law. Quan che, or "probationary detention" (article 30 of the Criminal Code) allows the State to place persons convicted of "national security" offences under the supervision and re-education of local authorities for a period of one to five years after completion of their prison sentences, during which time they are forbidden to leave their residence, deprived of their civic rights and maintained under constant police surveillance. In theory, quan che requires a court order but, in practice, it is automatically applied to political and religious prisoners after their release. Buddhist monks Thich Quang Do, Thich Tue Sy and Thich Nhat Ban, released under amnesty in September 1998 by order of President Tran Duc Luong, have not been issued with residence permits (ho khau); their communications are monitored and visits to their pagodas are suspended. The Special Ranporteur on Religious Intolerance of the Commission on Human Rights, Mr. Abdelfattah Amor, was forcefully prevented from visiting Thich Quang Do at the Thanh Minh monastery in October 1998, and in March 1999, Thich Quang Do was arrested and held in custody for one day after he left his pagoda to visit Thich Huyen Quang, Patriarch of the Unified Buddhist Church of Viet Nam (UBCV) in Quang Ngai province. UBCV monks Thich Tri Tuu, Thich Hai Thinh and Thich Hai Chanh are similarly detained, although they have fully served their prison sentences and were not condemned to quan che at their trial on 15 November 1993. Released on 7 March 1997, Thich Tri Tuu was taken straight from prison to the State-sponsored Tay Thien pagoda in Hue, where he is at present detained.

2. The FIDH and the Viet Nam Committee consider the arbitrary application of "probationary detention" to be tantamount to a second term of punishment and thus incompatible with article 14 (7) of the International Covenant on Civil and Political Rights, which states that no one "shall be ... punished again for an offence for which he has already been finally convicted".

3. Quan che hanh chinh, or "administrative detention" (decree 31/CP) empowers local security police to detain suspected "national security" offenders for six months to two years without trial. Many government critics, such as the intellectual Ha Si Phu, the poet Bui Minh Quoc and others, are detained under this formidable tool of political repression. Mr. Amor, in his report on his visit to Viet Nam to the fifty-fifth session of the Commission on Human Rights (E/CN.4/1999/58/Add.2) expressed his "concern at the extraordinary powers conferred on the security services", who may arrest citizens under decree 31/CP for activities "that are fully legitimate under international law".

4. The FIDH and the Viet Nam Committee are particularly concerned by the widespread arbitrary detentions and prosecutions of critics and human rights advocates on charges of "endangering national security". As both Mr. Amor and

the Working Group on Arbitrary Detention (see E/CN.4/1995/31/Add.4) observed, the catch-all "national security" provisions in Vietnamese law heavily penalize the peaceful expression of political or religious dissent.

9. In re-education camps such as T5, Thanh Cam district in Thanh Hoa province, many prisoners of conscience are seriously ill, suffering from the cumulative effects of solitary confinement, hard labour and harsh living conditions. The prisoners cited below have lost almost all their teeth from malnutrition and vitamin deficiencies, and receive no medical care. Most were convicted of "attempting to overthrow the people's government" (under article 73 of the Criminal Code). This ambiguous and dangerous clause, which carries the death sentence as maximum penalty, makes no distinction between acts of violence, such as terrorism, and peaceful political dissent. Given the judiciary's lack of independence in Viet Nam, people may legally be killed under article 73 for disagreeing with the policies of the State:

Tran Van Luong, aged 58, former Member of Parliament in the Republic of (South) Viet Nam (RVN), sentenced to death on 22 September 1988 for distributing human rights leaflets (sentence commuted to life imprisonment following an international campaign launched by the Viet Nam Committee on Human Rights), is dangerously ill, suffering from serious liver and stomach complaints;

Brother Mai Duc Chuong, aged 68, member of the Roman Catholic Congregation of the Mother Coredemptrix, sentenced in 1987 to 20 years' imprisonment for "spreading propaganda against the Socialist regime and undermining the policy of unification", suffers from high blood pressure and chronic arthritis;

Vu Dinh Thuy, aged 50, imprisoned without trial for "re-education" in 1975 was accused of writing poetry in prison in 1979 and arbitrarily condemned to life imprisonment by an ad hoc tribunal. He is in very poor health after long years of detention, ill-treatment and malnutrition;

Tran Nam Phuong, aged 49, a lay Buddhist, condemned to death in 1983 (sentence commuted to life imprisonment on 31 December 1985), suffers chronically from haemorrhoids and gastropsis;

Phan Van Ban, aged 60, former RVN officer, sentenced to life imprisonment in 1965, suffers from chronic asthma and arthritis;

Nguyen Van Bao, aged 65, a history and geography teacher, condemned to life imprisonment in 1985, is critically ill, suffering from tuberculosis and high blood pressure;

Do Huon, aged 55, Vietnamese-American, arrested in March 1993 and sentenced to life imprisonment for attempting to organize demonstrations in Viet Nam, suffers from diabetes;

Le Van Son, aged 67, member of the Hoa Hoa religious sect, arrested in 1982 and sentenced to life imprisonment, suffers from high blood pressure;

Nguyen Truong, aged 67, a peasant, sentenced to life imprisonment in 1985, with one leg amputated, suffers from severe sciatica, high blood pressure, malnutrition and depression (he has been deprived of all correspondence with his wife for several years); he has attempted to commit suicide several times by banging his head on the cell wall.

6. Ill-treatment and deplorable conditions of detention also prevail in Z30A camp in Xuan Loc district in Dong Nai province. UBCV monks Thich Thien Minh and Thich Khong Tanh informed Mr. Amor during his visit to the camp that prisoners are held in solitary confinement, chained, refused pen and paper, exposed to AIDS contamination by the shared use of the same razor blades, that even sick and elderly prisoners (over 70 years old) must perform hard labour, and that the lives of many sick people are in danger.

Thich Thien Minh (Lay name Huynh Van Ba), aged 49, is serving a double life sentence for defending religious freedom (1979) and for attempted escape (1986). Detained in K2, a disciplinary sub-camp in the depths of the forest, Thich Thien Minh is very weak after months of solitary confinement, but must nevertheless perform strenuous hard labour. He was declared a victim of arbitrary detention by the Working Group on Arbitrary Detention (Opinion 21/1997);

Thich Hue Dang (Nguyen Ngoc Dat), aged 55, a UBCV monk, was sentenced to 20 years' imprisonment on 28 May 1992 for writing pamphlets on Buddhism and democratic reform. Mr. Amor was not allowed to meet him during his visit. He suffers from diabetes;

Nguyen Dinh Huy, aged 66, was arrested in November 1993 and sentenced to 15 years in prison for attempting to organize an international conference on economic development and democracy in Ho Chi Minh City;

John Bosco Pham Minh Tri, Bernard Nguyen Viet Huan and Michael Nguyen Van Thin, Catholic priests, members of the Congregation of the Mother Coredemptrix, arrested in 1987, are serving 16-20 year sentences. Mr. Amor asked to meet these priests but the prison commandant denied their presence in the camp;

Hoang Van Giang, lay Buddhist, sentenced to 19 years' prison in 1992, has gone blind as a result of ill-treatment and frequent beatings in the camp.

7. Moreover, the FIDH and the Viet Nam Committee strongly condemn the widespread, arbitrary practice of placing citizens under house arrest (quan thuc) without trial or due process of law:

Thich Huyen Quang (Le Dinh Nhan), 79 year old Patriarch of the independent UBCV, has been under house arrest in Quang Ngai province since 1982. The Quang Ngai police announced on 22 November 1997 that his house arrest had been lifted. However, they maintained him in detention and forbade him to return to his residence in An Quang pagoda, Ho Chi Minh City. On 22 March 1999, he was arrested and subjected to intensive question because he received a visit from Thich Quang Do;

Thich Lieu Minh (Le Van Hien), UBCV monk, has spent 22 years under house arrest without charge. He is now detained in Tam Heip village in My Tho province.

8. The FIDH and the Viet Nam Committee on Human Rights:

(i) fully endorsing the recommendations of the Working Group on Arbitrary Detention and the Special Rapporteur on Religious Intolerance, urge Viet Nam to take positive steps to bring its domestic legislation into line with international law, especially regarding the ambiguous definitions of "national security" offences;

(ii) request the Sub-Commission to include the names of detained human rights defenders Thich Huyen Quang, Thich Thien Minh, Thich Hue Dang, Tran Van Luog, Vu Dinh Thuy and Tran Nam Phuong in the resolution on human rights defenders at its fifty-first session.

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Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by Centre Europe Tiers-Monde, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 June 1999]

GE.99-14028 (E)

Land concentration in Brazil, a policy of poverty

1. The question of land and its unequal distribution lies at the heart of the problems of economic, social and cultural rights and the right to development in many countries of the South. Indeed, the lack of access to the means of production is not unrelated to the problem of extreme destitution affecting hundreds of millions of rural inhabitants throughout the world.

2. In many countries the question of agrarian reform is raised in vain with the economic and political authorities, which are hostile to land redistribution and indeed look favourably on a concentration that benefits the rich families and foreign companies wishing to set up in business at low cost and gain access to cheap labour prepared to accept the most arduous working conditions.

3. Centre Europe Tiers-Monde (CETIM) wishes to point out that the consequences of this unequal distribution of land for all human rights are a subject of major concern to the organizations of civil society in many "developing" countries. It must be stressed that the maintenance of land concentration has an impact not only on economic, social and cultural rights but also on civil and political rights.

4. Firstly, the phenomenon of land concentration leads to poverty and to severe deterioration in living conditions for the population. The exclusion of a large proportion of citizens constitutes a denial of their economic and social rights: the right to food, the right to health, the right to work, the right to just and favourable conditions of work, the right to an adequate standard of living, etc.

5. Secondly, acts of civil resistance to these difficult economic and social conditions are severely repressed by the authorities in power, which constitutes a deliberate violation of civil and political rights.

In Brazil, exclusion and repression go hand in hand

6. In Brazil, there is an extreme concentration of land in the hands of the big landowners. 2.8 per cent of landowners own over 56 per cent of agricultural land, and 1 per cent of farms occupy 45 per cent of the total area. On the other hand 50 per cent of small landowners have only 2.5 per cent of the area but employ about two thirds of the rural population.

7. The Brazilian authorities, unable to justify their policy of exclusion in any way, often blame natural phenomena as being solely responsible for human catastrophes when they occur. The same attitude is taken by other Governments, as we reported in the case of hurricane Mitch, for example. 1/ However, if climatic events have such an impact on impoverished populations, this is precisely because a discriminatory policy is conducive to the deterioration of the living conditions of the deprived sections of society; the population is thus made vulnerable to natural events such as floods, drought, plagues of insects, etc.

8. What is civil society blaming on the Brazilian Government with regard to land? Despite the existence of the National Institute for Settlement and

Agrarian Reform (INCRA) and despite the promises made by various Governments to tackle the issue of land redistribution, very few genuine steps have been taken to change the situation. Whereas land is plentiful, an enormous proportion of small farmers are still landless and have no resources. Brazil has an area of 850 million hectares, 390 million of which are considered suitable for agriculture by the INCRA. Yet 31 per cent of this land is left unused.

9. The main argument put forward by the Brazilian Government is that the expropriation of land is an expensive and slow process. The Government claims that it cannot afford to buy back land from the big landowners. In fact, it is pressure from the big landowners on the Government and their presence within the nation's most powerful bodies that compel the Government to pay them high levels of compensation.

10. In opposition to this, civil society, made up of many NGOs, cooperatives, farmers' associations and rural movements, sets out a different approach to agrarian reform, based on respect for human rights and not on the economic interests of the richest, a reform that has frequently been imagined but never achieved.

11. A number of points are made by these movements. First of all, many of the estates have no legitimacy; some are merely the result of illegal political arrangements. Consequently, the legal basis of certain estates, most of them huge, should be questioned at Government level. Furthermore, a substantial number of these estates leave large areas of land unfarmed. In fact, many landowners do not make use of all the land because they are simply not accustomed to doing so.

12. In many cases, therefore, it is neither legitimate nor necessary to buy land back from the big landowners. Instead, objective criteria should be applied to determine the true ownership of the land. Seizure by the State of land that is held illegally and/or unused would permit equitable redistribution to small farmers in need.

13. The authorities do not take these proposals into account and claim they do not have the resources to help the poor, yet this is the commitment they entered into when they ratified the various international human rights instruments.

The "Land Bank" of the World Bank

14. Caught up by market forces, which are virtually the sole decision-makers, and swept along by the ultraliberal drive towards globalization, the Brazilian Government is abandoning the idea of expropriating immense areas of land that have been monopolized and often left unused by the big landowners. In this it is supported by the World Bank, which is proposing a "Land Bank" programme. This programme started in 1997 with the stated aim of offering funds to landless peasants so that they could purchase their plots direct from the landowners. However, this programme, which is presented as profitable to small farmers, is being roundly criticized by civil society in Brazil. It is regarded as a deception inasmuch as it is

an inappropriate response chosen by the Brazilian Government in order to avoid undertaking a genuine agrarian reform, even though such a reform is laid down in the 1988 Constitution.

15. With this programme the Government first of all is implicitly recognizing the legitimacy of land ownership as it currently stands in Brazil and secondly is abandoning its formal commitments to the redistribution of land by asking small farmers to pay for their land themselves with the aid of a loan, presenting this as aid by the international community (World Bank) and the national authorities. In this way agrarian reform is deliberately being abandoned so that market forces can prevail. Moreover, this programme would cause small farmers to get into debt and would do nothing to bring about a satisfactory improvement in their situation. It would also enable the authorities to pass their responsibilities on to the private sector, the problem of agrarian reform would no longer fall within their competence.

16. The main criticisms levelled by the grass-roots organizations are as follows:

Whereas the World Bank has announced the allocation of US$ 440 million annually for the Land Bank, the Government of President Fernando Cardoso has cut from the budget 700 million reais (US$ 1 = 1.8 real) allocated for agrarian reform.

If farmers join this programme, they are no longer eligible for the subsidies allocated by the country's various institutions, such as PRONAF (Special Credit Programme for Agrarian Reform) or INCRA, which in normal times make incentive credits available. Thus they would have no assistance for starting up and for refinancing the loans they enter into to purchase their land.

Control of the land remains in the hands of the big landowners. Land will only be distributed if the owner wishes to sell it. Moreover, since the owner can decide what land he wants to sell, only poor-quality land will be sold.

The Land Bank legislation provides for the establishment of producers' associations with access to the programme. The programme would thereby tend to strengthen the electoral alliances of Brazil's rural oligarchies, and would be conducive to the political subjugation of the poor.

In replacing expropriation by the Land Bank, the authorities and the World Bank are rewarding the big landowners, who will receive cash for the land they sell instead of agrarian debt certificates payable over a 20-year period.

Expansion of the programme to the entire country will lead to a substantial increase in land prices. The big landowners will become speculators by organizing themselves into cartels and pushing the price up in each district. Landless peasants and small farmers will be obliged to finance the purchase of land at prohibitive prices.

Thus the majority of civil society believes that this programme will tend to increase poverty, not to combat it as is widely proclaimed by the World Bank and the Cardoso Government.

Democratic resistance and repression

17. The poverty, injustice and inequity prevailing within rural Brazilian society have led in recent years to extensive non-violent resistance movements by the rural populations. The Landless Peasants Movement (MST), for example, which is well known internationally, carries out activities simply aimed at occupying land that is unused by the big landowners so as to grow crops and make a living. While battling for respect for their economic, social and cultural rights, which are flouted by the authorities, the small farmers are subjected to civil and political repression: arbitrary arrests, torture, rape, summary execution, massacres, etc. This occurs in particular during "evacuations" of land occupied by the landless, which give rise to all kinds of abuses. However, such repression is also a constant feature in the everyday lives of members of the MST and other protest movements: arrest, detention, torture, etc.

18. Between 1985 and 1997, 1,003 small farmers were murdered in Brazil. Only 56 of these murders led to criminal proceedings and only a few of the cases came to trial. There is almost total impunity. Two peaks of violence were reached with the massacres at Corumbiara (9 August 1995) and Eldorado de Carajas (17 April 1996). In the former, 11 farmers were killed during the evacuation of the land by the military police. Many people were tortured and humiliated and 90 were seriously injured. In the second massacre, 19 people were killed.

19. For 1998, it is reported that 32 workers were murdered, 142 workers were imprisoned and 20 people were tortured in the Tocantins region. There were a number of cases of torture in other regions, all linked to the MST, not to mention the acts of violence, threats and frequent attacks of all kinds suffered by the farmers at the hands of the military police. This violence is particularly severe during illegal night-time evacuations, especially this year in Paraná state. Today over 60,000 families are still living in makeshift camps, in complete violation of the Brazilian Constitution. Many of them have been living in these camps for over 10 years. 2/

20. The Brazilian Government, which is facing genuine national and international pressure on the question of land, is endeavouring on the one hand to discredit the MST, despite its broad grassroots support, and on the other hand to camouflage its abandonment of agrarian reform through the Land Bank programme being undertaken jointly with the World Bank. This programme, set up without consulting the citizens concerned (rural organizations, indigenous and Afro-Brazilian communities, plantation workers, etc.) as ought to have been the case, shows how the World Bank persistently imposes inappropriate projects in agreement with the privileged groups of the countries of the South. It is a model that was devised abroad and not developed by the local democratic organizations.

21. We urgently request the Sub-Commission on Prevention of Discrimination and Protection of Minorities to intervene with the Brazilian Government so

that the latter complies with the International Covenant on Economic, Social and Cultural Rights and in particular article 11, which recognizes, inter alia, "the right of everyone to an adequate standard of living ... and [the need for] reforming agrarian systems ...", together with the provisions of the International Covenant on Civil and Political Rights.

Notes

1/ See written statement by CETIM to the Commission on Human Rights: "Hurricane Mitch, a natural disaster seriously aggravated by the structural adjustment policies and questionable actions of Governments and transnational companies" (E/CN.4/1999/NGO/100).

2/ For further information on the violation of the civil and political rights of rural inhabitants, see the report "Human rights and the MST struggle, report 1998", which is available on request.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the Centre Europe Tiers-Monde,
a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 June 1999]

GE.99-14032 (E)

Free trade in agricultural products imposed on the South by World Trade Organization agreements and its consequences

1. The prevailing view that international trade liberalization and deregulation provide the best guarantee for economic and social rights through growth is belied by the facts. These are abundantly illustrated in the reports of the United Nations Development Programme (UNDP), which portray the disastrous situation of millions of people worldwide, who face famine and unemployment and are denied arable land, housing, access to education, etc.

2. In this paper, we would like to draw the Sub-Commission's attention to the consequences of free trade, imposed on southern countries by the World Trade Organization (WTO), especially in agriculture.

3. WTO officially began operations in January 1995, taking over from the GATT after the conclusion of the Uruguay Round negotiations. Agriculture appeared for the first time in one of the agreements signed on that occasion. This is a matter of concern for a growing number of farmer organizations, NGOs and some southern countries. The agreement deprives the latter of the right to control imports of food and other agricultural products. It also forces the governments of those countries to reduce and eventually to end their subsidies to farmers, thus exposing them to the competitive conditions of the global agricultural market.

4. Four years on, the disastrous impact on southern countries which have liberalized that crucial sector is becoming clear: control of the world food system is falling into powerful hands, or more precisely into those of the major agribusiness corporations. This is affecting the lifestyle, income and even the survival of small farmers worldwide, and is threatening the food security of many countries.

5. In November 1996, the heads of State and government of 186 countries met in Rome for the World Food Summit convened by the United Nations Food and Agriculture Organization (FAO). They proclaimed their national commitment and their political will to make a constant effort to eradicate hunger in all countries. They agreed to do everything possible to reduce the number of people suffering from chronic malnutrition - which now stands at over 800 million - by the year 2015. Following its free-trade approach, FAO maintains that the withdrawal of domestic trade barriers should enable all countries to export more products for which they have a "comparative advantage", while eliminating less productive activities. FAO does admit that this will entail "adjustment costs" for producers, but insists that such costs will be offset in the longer term by new export opportunities and the broader benefits of modernization.

6. It turns out, however, that the free market is an illusion intended to serve the interests of the strongest, and that global liberalization would be extremely harmful, considering the disparities in production facilities and the diversity of market players.

7. The first problem concerns agricultural subsidies. Southern farmers are at an enormous disadvantage in this respect. A small southern farmer earns in a year hardly more than the subsidy per tonne granted to his United States

"colleague" under the Export Enhancement Programme (EEP) (US$ 77/tonne). Considering the latter, if suitably equipped, produces between 800 and 1,000 tonnes a year, the subsidies alone received by an American cereal farmer are a thousand times greater than his southern colleague's income.

8. Free-trade advocates recognize that such subsidies cause distortions in the market, but they maintain that they are bound to disappear as a result of the new GATT measures, gradually introduced since 1995. Hence the widespread illusion that producers all over the world are placed "on an equal footing". This GATT agreement is a real fraud. In actual fact, the developed countries have only undertaken to reduce their subsidies by between 20 and 36 per cent. In addition, far from eliminating the subsidy structure of industrialized countries, the GATT has left them broadly unchanged, especially thanks to the bilateral agreement between the United States and the European Union known as the "green box". Through that agreement, the United States and the European Union have succeeded in maintaining and even expanding the subsidies on their agricultural exports. Some governments of southern countries, on the other hand, will be forced to liberalize their economies still further, by reducing their taxes on imported foods by 24 per cent and by increasing their minimum imports from 1 per cent to 4 per cent.

9. But even if, according to the agreements, subsidies are due to be eliminated in the longer term, the real problem lies elsewhere: the differences of productivity between different countries in the world, and more particularly between southern countries and northern countries, are such that making them compete freely against each other can only lead to the elimination of the weakest, i.e. to the destruction of the southern economies. At the end of the twentieth century, the best equipped farmers in developed countries and a few limited sectors of southern agriculture can achieve net productivity levels of the order of 5,000 grain-equivalent quintals per worker; in the developing countries, on the other hand, productivity among most manual labourers is still of the order of 10 quintals. The sharp shock of opening up agricultural markets can only aggravate the existing inescapable gap.

10. In other words, the liberalization of international trade cannot be conducive to the development of domestic agricultural economies. The beneficiaries are neither the farmers nor the governments of the third world. The effect of trade liberalization has chiefly been to enrich transnational agribusiness corporations (TNCs) such as Cargill and Continental. The giant coporations in this sector between them already control three-quarters of world trade in cereals.

11. The worldwide competition WTO wants to introduce is unfair, inappropriate and disloyal. It is unfair, because the northern TNCs, with their advanced technology and their agribusiness experience, can only cause the disappearance of traditional agriculture, which is left helpless. "They are generally unable to compete with powerful TNCs that benefit from strong economies of scale, large amounts of capital and technology and have access to global markets. The technological and managerial skills that investors generally bring with them also give them a competitive advantage over local producers." 1/ Secondly, it is inappropriate, because it does not serve any real need, apart from swelling the profits of transnational corporations and enriching elites. Lastly, it is disloyal, not only because of the subsidies

granted to agriculture and the maintenance of protectionist barriers in northern countries, but also because "while generous incentives are extended to foreign investors, small producers suffer under considerable constraints, including the disincentive of an unfair tax burden." 2/ Furthermore, TNCs are subject to no controls.

Impact on the environment and health

12. The system of intensive agricultural production on which global competition is based is dangerous for consumers' health and more generally for biodiversity, since only high-yield species are bred. The beef trade in Britain was seriously disrupted by mad cow disease, which led to the extermination of 165,000 cows on account of the risk of the disease spreading to humans. The true extent of the recent scandal in Belgium involving dioxine-infected chickens is still not known. Farmers are now expressing doubts about intensive agricultural production, and the public has realized that nature cannot just be squeezed like a lemon. It is hardly prophetic to guess that unless proper measures are taken, there will be more and more cases of mad cows and dioxine-infected chickens.

13. Genetically modified organisms (GMOs), which, under cover of higher productivity, are shifting agricultural profits into the hands of the transnationals, will lead to a further reduction in biodiversity and the food security of southern countries. Furthermore, the long term consequences of these organisms for the environment and health are still not known.

Meeting the food needs of the world population?

14. Unlike the idea put out by companies marketing GMOs, these offer no solution to the future food needs of developing countries. In fact, to the extent that they monopolize agricultural research at the expense of other approaches, GMOs might again have a very negative impact.

15. As Mr. Danilo Türk has said, "the free market has never had the capacity or capability of creating conditions wherein the economic, social and cultural rights of all citizens were met and fully realized". 3/ Similarly, global free trade in food has little or nothing to do with meeting human needs. On a global level, the aim of the food trade is not to ensure adequate nutrition, but to locate effective, i.e. solvent demand. This is why the greater part of agricultural trade occurs among populations that are already well fed.

16. A particularly eloquent example is the trade in grains such as maize, 60 per cent of which is destined for animal feed rather than for human consumption (this is a highly inefficient way of converting proteins into energy, considering that meat proteins cost 10 times more than the proteins found in lentils or cereals). This example raises doubts about productivity goals in terms of the energy and environmental costs involved and points to the conclusion that some agricultural systems actually consume more resources than they produce.

17. On a global scale, the problem of hunger is not and has never been caused by sheer shortage of food. There is plenty to feed everyone in the world, and yet more people than ever go hungry. This means it is not a

question of democracy, but a problem of production and distribution and disparities in purchasing power. Apart from global food insecurity, agricultural free trade aggravates poverty structurally by reducing the capacity of people to either grow or purchase their own food.

In rich countries, poverty and hunger are also a fact of life

18. For example, while there are mountains of food on Britain and miles of food shelves in supermarkets, one-fifth of the British population cannot afford an adequate diet owing to increasing unemployment and cuts in government aid. Five companies alone control 70 per cent of the food market in Britain. Food insecurity is also worsening in the rich countries as the food system becomes increasingly centralized.

19. With respect to human rights, it is essential to have a global approach in order to give "practical meaning to the concept of indivisibility and interdependence of all human rights". 3/ In that sense, the right to food must be defended in the same way as the right to life. And yet, by signing a whole series of trade agreements, like the free agricultural trade agreement that we commented on above, most States are endangering the lives of their citizens. Even if it cannot be demanded of States that they meet the food needs of their citizens, they may nevertheless be expected to create the necessary conditions for these needs to be satisfied (as stipulated in art. 11 of the International Covenant on Economic, Social and Cultural Rights), instead of agreeing to conditions that actually prevent enjoyment of that most basic right. Does one need to recall that the realization of human rights is an obligation for States and not an option?

20. We urge the Sub-Commission to undertake a study on the implications of free trade and the GATT and WTO agreements for human rights, particularly in the field of agriculture.

Notes

1/ Document by the Secretary-General, The relationship between the enjoyment of human rights, in particular, international labour and trade union rights, and working methods and activities of transnational corporations (E/CN.4/Sub.2/1995/1, para. 132).

2/ Ibid.

3/ The realization of economic, social and cultural rights: second progress report prepared by Mr. Danilo Türk, Special Rapporteur (E/CN.4/Sub.2/1991/17, para. 178).

4/ Realization of economic, social and cultural rights, final report submitted by Mr. Danilo Türk, Special Rapporteur (E/CN.4/Sub.2/1992/16).

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Joint written statement submitted by Habitat International Coalition and the Lutheran World Federation, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 July 1999]

GE.99-14243 (E)

Human rights as the primary objective of international trade investment and finance policy and practice

Introduction

1. The Lutheran World Federation, Habitat International Coalition and the International NGO Committee on Human Rights in Trade and Investment welcome Sub-Commission resolution 1998/12, which called for a working paper to be prepared on "ways and means by which the primacy of human rights norms and standards could be better reflected in, and could better inform, internati nal and regional trade, investment and financial policies, agreements and practices, and how the United Nations human rights bodies and mechanisms could play a central role in this regard", including "an analysis of the Multilateral Agreement on Investment (MAI) from a human rights perspective, and [consideration of] ways to ensure that future negotiations on the Agreement or analogous agreements or measures take place within a human rights framework". We have high hopes that the resulting working paper will provide a secure foundation for leadership by the Sub-Commission in this critical discussion. It presents a pivotal opportunity for presenting a comprehensive conceptual framework for an ongoing process of study and reflection.

Key premises

2. Our position is based upon a number of key premises. Although these principles are frequently acknowledged at a rhetorical level, we believe that it is necessary to forcefully restate them and to insist upon their practical consequences.

The human rights and fundamental freedoms set out in the major human rights instruments are a comprehensive catalogue of the elements of human dignity and well-being. Taken together, they constitute a universally acceptable definition of the notion of human dignity and well-being.

These rights and freedoms have, by and large, the status of international law and are binding upon States.

The promotion and protection of human rights is the first responsibility of Governments, and may not be subordinated to other priorities.

Economic liberalization is not an end in itself, or a pure good. It only has value if and to the extent that it serves to promote human dignity and well-being.

Any economic policy or practice which benefits a small minority at the expense of the majority does not promote human dignity and well-being, and is contrary to the principles of human rights and fundamental freedoms.

Growth and development do not automatically bring about a reduction in inequality. Whilst current international economic policies and practices have resulted in significant wealth creation, they have also

presided over a demonstrably widening gap between rich and poor nations and people. The wealth created by these policies and practices has not "trickled down" to the majority of humanity, and marginalized and vulnerable groups and communities have seen their marginalization and vulnerability increase, rather than decrease, in the era of economic liberalization.

Accordingly, the policies and practices of economic liberalization need to be more deliberately tested against, and guided by, the legal obligations contained in the international human rights instruments.

4. These premises also undergird the policy statement of the International NGO Committee on Human Rights in Trade and Investment issued in September 1998, and in particular the four fundamental human rights principles put forward in that policy statement as guiding principles against which economic policy needs to be judged and as a basis towards devising ways and means for the realization of human rights in the current economic context - the primacy of human rights, non-retrogression, the right to an effective remedy in the appropriate forum, and the rights of participation and recourse of affected individuals and groups.

Rethinking economic policy

5. Recent international economic turmoil has obliged economic policy makers to reassess the processes of "globalization" and to consider ways in which to ameliorate the harsh rule of the market. There is a growing consensus, even among those promoting economic liberalization, that some degree of regulation of these processes is desirable and necessary in order to ensure positive social outcomes.

6. The challenge, however, is to find concrete ways in which the goals represented in international human rights law can be concretely supported, rather than undermined, by international economic policy and practice. This must ultimately involve a complete change of culture in the economic policy forums, which presently find human rights principles not to be central or even germane to their mandate, towards acceptance of these principles as a fundamental basis for the formulation of economic policy.

Towards a human rights analysis of major economic policies, practices and institutions

6. A thorough assessment is required of the extent to which, and means by which, human rights (especially economic, social and cultural rights) are currently integrated (or not) in international economic policy formulation and implementation, and identification of ways in which those principles can be more deliberately and centrally located in these processes. Key areas of assessment would be as follows:

(a) A human rights-based assessment of the underlying assumptions that inform the major economic policies. One of these assumptions is that economic policies should be assessed primarily in terms of macroeconomic indicators related to growth rates, inflation, balance-of-payments, exchange rates etc., rather than social and environmental indicators that are a more proximate

measurement of the degree of fulfilment of human rights obligations in the social and economic field. Application of the "precautionary principle" developed in the environmental field would be a desirable innovation in the economic policy arena (i.e. proponents of a particular policy should demonstrate beyond reasonable doubt, before the policy is implemented, that it will not have detrimental impacts on human rights).

(b) An assessment of the degree of integration of human rights obligations in the governance and working arrangements of various economic institutions and arrangements. Following from the implications of (a), this assessment should cover the key multilateral, plurilateral and bilateral economic institutions and arrangements, and should focus on the issues of policy coherence (verifying that economic policies and rules pursued in these institutions are not in conflict with the international human rights regime) and the primacy of human rights (i.e. that in cases of conflict, human rights obligations have primacy over trade and investment rules). A particularly useful statistic would be the proportion, in each institution or arrangement, of voting rights held by member States that have signed and ratified the various human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights.

(c) An assessment of the adverse human rights impacts of the activities of transnational corporations, and of the capacity and responsibility of States to regulate their methods of work and practices in line with international human rights obligations. The work of the Sub-Commission on the effects of the working methods and activities of TNCs on the enjoyment of human rights and on ways of ensuring that the methods and activities of TNCs are in keeping with the economic and social objectives of the countries in which they operate, is providing a valuable platform for consideration of this question.

(d) An assessment of the adverse human rights impacts of the practices of global financial markets pursuant to widely applied financial liberalization policies, and the types of international reform required to ensure that supranational governance in the area of finance is consistent with the collective human rights obligations of States. This is probably the area where the least study has been undertaken from an explicitly human rights perspective, and yet concerns the set of policies that has had the most devastating impact on economic and social rights around the world in recent history.

International trade and human rights

7. Although the constituting documents of the engines of international trade liberalization, such as the World Trade Organization (WTO), invariably pay lip service to the notion that international relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and promoting sustainable development, in practice these objectives receive little specific attention in these mechanisms and agreements. Where social priorities do feature in the key trade-related agreements, they do so only in "side agreements" or

adjunct clauses. This exposes an attitude which is at odds with the now common acknowledgement that trade liberalization is not an end in itself but a tool for the enhancement of human development and well-being.

8. The very limited integration of human rights with trade policy has generally only been by way of negative conditionality. This again betrays a culture in which human rights principles have been relegated to the status of a tool of trade policy, rather than the reverse. For this reason, negative trade conditionalities based upon one country's perception of another country's human rights record is precisely the wrong approach to take in creating a convergence between trade policy and human rights principles. The proper application of a human rights approach would fundamentally change the way trade policy is formulated and applied, and would place human rights at the apex of the process.

9. A detailed study of the extent to which human rights concerns are currently integrated into trade agreements and mechanisms, and the practical effect of those measures, is therefore necessary in order to arrive at recommendations which might adequately address the current tension between trade policy and its effects and the human rights principles which the international community has agreed it is the first responsibility of Governments to promote.

10. Until such a study is undertaken, it would be irresponsible in the extreme for Governments to embark upon a "millennium round" of further trade liberalization negotiations in the face of mounting civil society concerns about the social impacts of trade liberalization.

Transnational corporations and human rights

11. We are following very closely the work of the Sub-Commission in relation to the human rights impacts of the working methods and activities of TNCs. The significant role played by TNCs in the shape and functioning of the global economy, the current lack of effective regulation of their activities and the disastrous impact of TNC operations on many grass-roots communities demand an urgent and comprehensive examination of this issue. Accordingly, we welcome the establishment of the Sub-Commission's working group on TNCs and human rights and the breadth of its mandate.

12. We look forward to concrete initiatives from this working group to identify the human rights violations resulting from inadequately regulated TNC activity, and to propose effective means for ensuring compatibility between the operations of TNCs and the legal frameworks for foreign investment, and existing international human rights obligations and commitments.

Financial and investment liberalization and human rights

13. Recent history contains sharp lessons about the social impacts of financial and investment liberalization. Although studies produced by different arms of the United Nations have begun this process, it is clear that much further work still needs to be done on documenting and analysing such impacts and identifying the implications for future policy reform.

The following are some of the necessary focuses for further study:

(i) An audit of the human rights impact of the global economic crisis triggered in East Asia;

(ii) The role played in the economic crisis by financial liberalization policies pursued in, or imposed on, the countries concerned;

(iii) An overview of new financial and investment liberalization policies currently being pursued in different forums;

(iv) An overview of human rights-consistent alternative arrangements proposed in the context of current debates on reforming the "international financial architecture", including:

The proposal by the Task Force of the United Nations Executive Committee on Economic and Social Affairs that codes of conduct in the area of fiscal, monetary and financial policy be consistent with the provisions of the main United Nations human rights instruments;

The proposal by UNCTAD that current international rules and conditionalities should not prevent national Governments from taking appropriate unilateral measures (such as fiscal penalties or capital controls) to protect their citizens from the devastating consequences of sharp swings in short-term speculative capital flows;

The proposals by a growing number of NGOs that progressive taxation reform (such as the "Tobin tax" on short-term international financial transactions) be addressed internationally, through the United Nations;

(v) A consideration of other future policy directions in the areas of labour standards and social/environmental regulation.

The Multilateral Agreement on Investment (MAI) - implications for human rights

14. Negotiations on the MAI were formally terminated in the OECD in December 1998, due in large measure to the efforts of a remarkable civil society movement against the MAI. France's decision to withdraw from the negotiations (which heralded the demise of the MAI in the OECD) was based on a report commissioned by the Government which highlighted concerns about the "incompatibility" of the draft MAI (and its process of negotiation) with social and environmental commitments. Despite the termination of the negotiations in the OECD, the principles contained in the MAI negotiating text and the process through which it was produced continue to warrant close examination.

15. The objectives expressed in the negotiating text of the MAI are likely to continue to be pursued in other forums (including possibly WTO and IMF) and therefore remain live focuses of concern for human rights, labour, environmental and consumer rights groups. The concrete expression of those

objectives in the negotiating text provides a rare opportunity for pre-emptive analysis from a human rights perspective. Some of the key issues for human rights analysis of the MAI text would include the principles of "standstill" and "rollback" and their implications for the progressive realization of economic, social and cultural rights; the exceedingly broad definition of "investment"; the operation of the "National Treatment" and "Most Favoured Nation" principles in the area of investment; the abolition of "performance requirements" (such as local employment, local content and technology transfer requirements, and restrictions upon profit repatriation); the expropriation and compensation provisions and the dispute resolution procedures (especially relating to investor-to-State dispute resolution).

16. The process by which the MAI was negotiated also provides an important example of the sort of non-transparent and non-participatory processes whereby much of international economic policy is still formulated. As such, it calls for close analysis from a human rights perspective and application of that analysis to other economic policy formulation processes.

Conclusion

17. This policy discussion is a central one for international global governance in the twenty-first century, and the United Nations human rights regime must reassert itself in this discussion in order to ensure that economic policy focuses more on human development than a narrow conception of economic development and that the primary beneficiaries of globalization are people and communities, rather than markets and speculators.

18. Building upon the working paper prepared pursuant to resolution 1998/12, the Sub-Commission should undertake a more detailed study on this matter, with a view to the early establishment of a mandate for a special rapporteur on the primacy of human rights in international economic policy and practice.

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Sub-Commission on the Promotion and
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Fifty-first session
Agenda item 12 (a) (i)

REVIEW OF DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO:

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

Written statement submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 May 1999]

1. In this climate of adversity and tragedies which human beings inflict on each other, we have to think seriously of how to make the international mechanisms, which are the only instruments we have, an effective and a viable force in resolving international conflicts and appeasing the bloodthirsty instinct thriving inside of man. The United Nations is the only refuge and must be free from monopoly in order to make the people of the world believe in its mission and representation.

2. For years, during numerous conferences, we have listened carefully to statements on behalf of some of the people of this planet who suffer from mass deportation, massacres and genocide. Crimes whose brutal and evil nature would shame the devils themselves. What has befallen and is still befalling these people, especially the Palestinian people, in terms of suppression, oppression and persecution lasting more than 50 years, is an affront to human dignity at large and an affront to the letter and spirit of the very meaning of the word "human being".

3. We do not wish to repeat the details of the atrocities committed against the Palestinian people and the horrific facts in regards to what has befallen the people of the Balkans. Such wickedness is supposed to profoundly shock humanity's conscience and disgrace the most graceful among us. It makes us wonder where international law is in all of this chaos. Where are the international human rights instruments? Where is the General Assembly of the United Nations, and where is the Security Council?

4. The world society that issued at the beginning of this century the Charter of the United Nations and gave the right of veto to super-Powers such as the United States and the United Kingdom, was aiming at preventing hostile acts of aggression by the strong and powerful against the weak and unarmed. Such a right of veto provided for rescuing future generations from the misfortunes and bloodshed of warfare. Wars which twice before had brought upon one generation misery beyond description. Nevertheless, hostile transgressions of the strong against the weak are still being committed every day and threatening international peace. Yesterday against Libya and the Sudan, today against Iraq and the Balkans, and tomorrow no one knows whose turn it might be. All this is done in violation of international laws and the Charter of the United Nations and out of the context of Security Council resolutions.

5. One of the causes of the problems humanity faces every day is that of the world media. As they have reached almost every corner of the earth, the world media have, more often than not, used subjective data - from dubious and questionable sources. In an ingenious way, through employing biased and selective reporting techniques, the world media imposed propaganda on the world which is driving everyone downward as nations and people stumble in darkness.

6. Clothing a lie in the attire of truth is much more dangerous and destructive than outright lying since very few viewers exercise the necessary caution or have a sufficient grasp of the facts. It involves emphasizing half of the truth and intentionally overlooking the other half. It also involves attaching significance to the insignificant while making what is significant appear to be insignificant. Such world media practices rely on

misrepresentation of the truth not in the ordinary sense of falsification, but rather in a complicated and clever fabrication of misinformation. This role the world media have played and continue to play is an invisible and subliminal one, detected only by experts highly specialized in their fields.

7. The world media and the influence a few powerful pressure groups have over them have become an indisputable reality. They have been turned into an underhanded weapon against the human mind which is in a state of paradoxical turmoil. If not altered, this situation will eventually lead to grave and dangerous consequences. Internationally recognized human rights instruments and laws must be fully implemented to confront those who knowingly mix what is false with what is true.

8. The preamble to the Charter of the United Nations states: "We the peoples of the United Nations." These words have depth and a powerful meaning, and "We the peoples of the United Nations" must preserve them in our conscience and guard them through our work. NGOs participating in the Sub-Commission and even those who are not participating truly represent the people of the world. Therefore, NGOs must rise to the challenge of highlighting the problems and identifying the solutions to prevent the recklessness of the strong and powerful from exposing the world to imminent disaster.

9. EAFORD calls upon the international community and NGOs to support the following recommendations which our organization considers as essential and of utmost importance:

(a) To call on the Secretary-General of the United Nations to condemn in the strongest possible terms any use of military force out of the context of Security Council resolutions;

(b) To call on the General Assembly to find ways and means to enhance the effectiveness of the Security Council in discharging its principal role of maintaining international peace and security. Consultations should be started to work towards seeking a possible solution to the right of veto and its interference with resolutions adopted unanimously or by consensus. We recommend devising appropriate measures and procedures for ensuring the forwarding of any veto interfering with a resolution adopted by consensus to the International Court of Justice for a final decision in support or against the veto. (EAFORD has submitted a letter to the Secretary-General in this regard and we hope it will receive the necessary support.);

(c) To call on the Secretary-General to work in cooperation with the General Assembly to promote the application of the articles and clauses of the Charter advising and requiring the forwarding of international conflicts to the International Court of Justice, and for military force not to be used before a judgement is issued by the International Court of Justice;

(d) To call on the Secretary-General to initiate plans in cooperation with the General Assembly for the establishment of a United Nations global satellite channel network, translated into all the United Nations official

languages. The global satellite network should be under the supervision of the Secretariat and should transmit the work and conferences of the United Nations and provide press coverage to shed light on issues of concern to international cooperation and human solidarity.

10. Could our recommendations be oversimplifying complicated international matters? Could we be aspiring to outlandish ideals beyond humanity's reach? It may seem so, but we acknowledge that humanity's greatest strides towards peace and prosperity and the prevention of large-scale pain and suffering were made possible because of similar aspirations.